

REMARKS

This is a response to the Office Action mailed July 23, 2007.

Applicants would like to express their appreciation for the Examiner's indication that claims 1-38 and 40-51 are allowed.

The application has been objected to under 37 C.F.R. §1.172(a) as lacking the proper patentees' name and a "proper assent of the patentees" name has been required. In addition, the application has been objected to as lacking the written consent of all assignees owning an undivided interest in the patent.

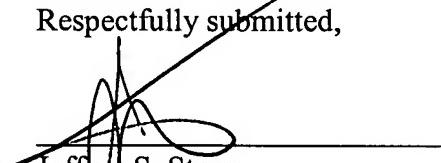
Submitted herewith is Form PTO/SB/53 (08-07) Reissue Application: Consent of Assignee; Statement of Non-Assignment indicating that, as suggested in the Office Action, the "Name of the Patentee(s)" is "Vladimir A. Stoy, et al.".

Also submitted herewith is Form PTO/SB/96 (04-07) Statement Under 37 C.F.R. §3.73(b), which has also been modified in accordance with the Examiner's suggestion to indicate that the name of the assignee is Replication Medical, Inc. (Delaware Corp.). Applicants note for the record that the assignee, Replication Medical, Inc. is a Delaware Corporation that took title from its predecessor Replication Medical, Inc., a New Jersey Corporation. The parentheticals listed on Form PTO/SB/96 (04-07) and in the previously submitted Form PTO/SB/96 (04-03) clarify the chain of title which may otherwise be confusing. Applicants also note for the record that the Notice of Recordation indicating the recordal of assignment from Gerald Gontarz to Replication Medical, Inc. (a Delaware Corp.) at Reel/Frame 019181/0487 erroneously designates "Serial Number: 09410268" when, in fact, the Recordation Form Cover Sheet submitted with the assignment for recordation properly designated the present Patent Appln. No. 10/625,390 as the application at issue. Applicants' representative has contacted the Assignment Branch and is submitting a Request for Correction to the Assignment Branch concurrently herewith.

In an abundance of caution, also submitted herein is a true copy of the original assignment from Gerald Gontarz to Replication Medical, Inc. (a Delaware Corporation).

Applicants note the indication in the last paragraph on page 3 and first paragraph on page 4 of the Office Action suggesting that the assignment from Gerald Gontarz should not be recorded against US Pat. 6,264,695 since he "has no rights to assign in the original patent and therefore that assignment should not be valid." Applicants respectfully disagree with those suggestions. According to the assignment executed by Gerald Gontarz, he assigned "the entire right, title and interest in and to the *invention* and any and all improvements entitled 'Spinal Nucleus Implant', *and which is found in* US Application No. 10/625,390 and US Pat. No. 6,264,695" (emphasis added). The assignment of the *invention* is valid on its face. Recordal of the assignment in the US Patent and Trademark Office serves as notice to all subsequent purchasers or mortgagees for valuable consideration of such assignment. It is respectfully submitted that recordal of the assignment against US Pat. No. 6,264,695 serves the notice function and has no substantive bearing on prosecution of the claims of the present application for reissue and does not adversely affect validity of the underlying assignment of the invention.

A good faith effort has been made to place the present application in condition for allowance. If there is any point requiring discussion prior to allowance, the Examiner is earnestly solicited to telephone the undersigned attorney for Applicants at the address below.

Respectfully submitted,  
  
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